

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

NORMA WILSON,	)	
	)	
Claimant,	)	<b>IC 02-501230</b>
v.	)	
	)	
C & S FOOD SERVICES,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Employer,	)	<b>AND RECOMMENDATION</b>
	)	
and	)	
	)	
STATE INSURANCE FUND,	)	Filed: August 24, 2005
	)	
Surety,	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Commission assigned this matter to Referee Rinda Just, who conducted a hearing in Pocatello, Idaho, on April 20, 2005. M. Anthony Sasser and Reed W. Larson represented Claimant. R. Todd Garbett represented Defendants. The parties presented oral and documentary evidence. One post-hearing deposition was taken and the parties submitted post-hearing briefs. The case came under advisement on July 25, 2005, and is now ready for decision.

**ISSUES**

As modified and agreed upon by the parties at hearing and in their briefs, the issues to be resolved are:

1. Whether Claimant is entitled to permanent partial or permanent total disability (PPD/PTD) in excess of permanent impairment, and the extent thereof; and,

2. Whether Claimant is entitled to *future* reasonable and necessary medical care as provided for by Idaho Code § 72-432, and the extent thereof.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that as a result of her industrial injury she has permanent scarring, pain, and a limp, and that her injuries affect her mentally and limit her social activity. She asserts that she is entitled to a permanent partial impairment (PPI) rating of 4% as a result of her industrial accident.

Claimant also asserts that she is entitled to additional medical care including cosmetic revision of her scar and referral to a nerve specialist for additional treatment for her nerve damage.

Defendants argue that Claimant has not proven any entitlement to permanent impairment and, hence, no entitlement to disability in excess of impairment. Defendants contend that Claimant received reasonable and necessary medical care for her injury, and no physician has recommended any additional medical care, including cosmetic scar revision or additional treatment for her nerve injury.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. Testimony of Claimant, offered at hearing;
2. Claimant's exhibits 1 – 8, admitted at hearing;
3. Defendants' exhibits 1-2, admitted at hearing;
4. Post-hearing deposition of Richard C. Hill, M.D., with one exhibit; and
5. Industrial Commission legal file.

At hearing, Defendants interposed an objection to Claimant's proposed Exhibit 9 (pages purportedly copied from *Guides to the Evaluation of Permanent Impairment*, Fifth Ed., hereinafter

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

“*AMA Guides*”). The basis of the objection was lack of foundation. Claimant’s Exhibit 9 was provisionally admitted pending Dr. Hill’s deposition, at which time Claimant could lay a proper foundation for the proposed exhibit. Claimant made no attempt during Dr. Hill’s deposition to lay any foundation for admission of Exhibit 9 and therefore, Claimant’s Exhibit 9 is excluded from the record herein. Objections at pages 8 and 19 of Dr. Hill’s deposition are overruled.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

## **FINDINGS OF FACT**

### ***BACKGROUND***

1. Claimant began working for Employer in or around June 2001 as a cafeteria worker. Her industrial accident occurred on December 6, 2001. After her accident, Claimant continued to work for Employer until April 2003 when she terminated her employment for reasons unrelated to this industrial injury.

### **ACCIDENT AND AFTERMATH**

2. The accident occurred while Claimant was draining water from a steam kettle in which spaghetti had been cooked. Claimant slowly opened the drain valve. When the kettle had drained about half way, she opened the drain valve a bit more. The pressure of the hot water caused the valve to pop out, splashing Claimant with hot water. A co-worker escorted Claimant to on-site medical facilities where her burns were dressed with burn gel and gauze. Claimant remained at the medical facilities for about an hour and a half, then walked back to the kitchen and finished her shift.

3. Claimant continued to be treated at the on-site medical facilities through the month of December. On December 28, Claimant presented at the Blackfoot Medical Clinic complaining of a painful burn on her left lower extremity that had not healed. Physician’s Assistant Rhonda Grandee

treated Claimant. PA Grandee noted a number of healing lesions, and a lesion on the lateral anterior portion of the lower left extremity was cleaned and dressed. Claimant was given a prescription for antibiotics and whirlpool therapy. Claimant returned for follow up with PA Grandee on January 6 and January 12, 2002. The wound was cultured and her antibiotics were changed. Claimant returned to the clinic again on January 26, and was seen by Dr. Hill because PA Grandee was unavailable. By February 2, 2002, the infection had resolved, the wound was healing well, and Claimant was released from care.

4. Claimant returned to the clinic on February 24 complaining of an ulceration that would not heal. PA Mark Udy treated Claimant, describing a “3 cm in diameter ulceration on her left lower leg, just medial to her shin.” Claimant’s Ex. 1, p. 021. The wound was cleaned and dressed and Claimant was advised to discontinue the antibiotic ointment, and to return in one week for follow up. Claimant returned to PA Grandee at the clinic on March 10, March 24, and March 31 for further treatment and dressing changes. On March 31, PA Grandee released Claimant from her care, as the wound was healing nicely.

5. At hearing, Claimant testified that as a result of the industrial injury she has a burning sensation, a limp, and a scar that causes her embarrassment in public. She also testified that PA Grandee told her she should see a nerve specialist regarding the pain in her leg:

Q. [By Sasser] By way of future medical treatment, Norma, is there anything else that your medical providers say that they can do or that should be done?

A. They want to look – there may be a possibility of nerve damage because of the pain that I experience in my leg.

Q. And who suggested that to you?

A. Rhonda [PA Grandee].

Q. And did she suggest seeing anybody else?

A. She suggested – she said we would – “I can’t do that. I want to send you to a nerve specialist.”

Tr., p. 21.

6. On May 23, 2004 Claimant returned to the clinic complaining of pain at the site of her burn scar on the anterior medial lower left extremity. PA Grandee wrote in pertinent part:

[Claimant] continues to have pain at the site of the scar after an industrial accident produced a burn years ago.

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I’m not sure what, if anything can be done for the pain, but it might be possible to obtain a better appearance if the scar is revised.

Dr. Hill Depo., Ex. 1. PA Grandee described the scar:

Scar, 1 x 2 cm is present to the left medial lower leg above the malleolus. There is an area of discoloration, a light tan, than [sic] extends 2.5 x 4.5 cm, surrounding the scar.

*Id.*

***DR. HILL***

7. Dr. Hill, a board-certified family practitioner who works at the Blackfoot Medical Clinic, testified via deposition. He stated that he has treated Claimant for many years; that Rhonda Grandee, PA, is an employee of the Blackfoot Medical Clinic. Dr. Hill explained that while he was not PA Grandee’s direct supervisor, she often consulted with him regarding patient treatment, and had consulted with him regarding Claimant’s treatment for her work-related burns.

8. Dr. Hill stated, and clinic records show, that he saw Claimant himself on two occasions—January 26, 2002 and April 26, 2005. Dr. Hill’s chart note for April 26, 2005 states that Claimant was in the office for some follow up regarding her December 2001 industrial injury. Dr. Hill observed in pertinent part:

Claimant has been left with a tender scar. . . .

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Claimant had a 3<sup>rd</sup> degree burn on the L[eft] medial lower leg which required over 4 months to heal after injury. . . . It has left her with a sensitive scar which is symptomatic with dependency of the L[eft] leg. She will be permanently bothered by continued hypersensitivity in the burn scar with little further change expected now over 3 years since the injury.

*Id.*

9. In his deposition, Dr. Hill testified about his April 2005 visit with Claimant:

The area of the burn was clearly visible on her leg with an atrophic scar, which is an area of thin and sensitive skin that was about one centimeter in vertical dimension and two centimeters in horizontal dimension, and there was a collar of red and sensitive skin around that. But it looked very – I think it looks very good for this time related to the burn healing.

Dr. Hill Depo., p. 10. Dr. Hill did not place any restrictions on Claimant as to work or daily activities; neither did he recommend any further medical treatment:

At this point I don't recommend that she see anybody for future medical treatment because I think there is very little to offer her further in care, other than she has this area of skin that is now more susceptible to trauma and injury and she just needs to be cautious and protect that area.

*Id.* at pp. 11-12.

10. Dr. Hill offered the following opinion regarding permanent impairment attributable to the healed burn on the anterior medial surface of Claimant's lower left extremity:

I would feel that she has a class 1 impairment of the skin, maybe 4 percent based on the susceptibility of that area of skin to trauma and to the irritation, to standing and dependency.

*Id.* at p. 12. Dr. Hill further opined as to impairment of the whole person:

Reviewing the classification of when you give a whole person impairment, I'd have to say this probably doesn't justify any impairment of the whole person.

*Id.* at p. 18.

## **DISCUSSION AND FURTHER FINDINGS**

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 6**

11. **Permanent disability.** As stated at the hearing, one of the issues in this proceeding is whether and to what extent Claimant is entitled to disability in excess of her impairment. The definition of “disability” under the Idaho workers’ compensation law is:

. . . a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

Idaho Code § 72-102 (10). A permanent disability results “when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected.” Idaho Code § 72-423. A rating of permanent disability is an appraisal of the injured employee’s present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors. Idaho Code § 72-425. Among the pertinent factors are the following: the nature of the physical disablement; the cumulative effect of multiple injuries; the employee’s occupation; the employee’s age at the time of the accident; the employee’s diminished ability to compete in the labor market within a reasonable geographic area; all the personal and economic circumstances of the employee; and other factors deemed relevant by the commission. Idaho Code § 72-430.

In a somewhat surprising tactical reversal, Claimant presented no evidence on the issue of disability, nor did she argue the issue of disability in excess of impairment in either her opening brief or her reply brief. The record reflects that following her industrial injury Claimant continued to work for Employer, without restrictions, for more than a year—ultimately separating from her employment for reasons unconnected to the industrial injury at issue in this proceeding. The record is devoid of

evidence, and the briefing is devoid of analysis, concerning the relevant medical and nonmedical factors that would support any finding of disability.

Instead, Claimant's argument focused on impairment, which is a necessary, but not sufficient, element of disability. As explained by the Idaho Court in *Urry*:

As we have explained, impairment and disability are conceptually distinct; but there must be impairment for disability to exist.

*Urry v. Walker Fox Masonry Contractors*, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

12. **Permanent impairment.** Although not identified as an issue at hearing, permanent impairment deserves some discussion here because it is a necessary prerequisite to a finding of disability.

"Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of the evaluation. Idaho Code § 72-422. Evaluation (rating) of permanent impairment is a medical appraisal of the nature and extent of the injury or disease as it affects an injured worker's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry* at p. 753.

Dr. Hill was the only physician who testified concerning the issue of Claimant's impairment. Dr. Hill saw Claimant twice concerning the instant industrial injury—once for treatment of the problematic burn and again, almost three and a half years later, preparatory to the hearing in this



matter. In addition, he reviewed Claimant's medical records, including PA Grandee's notes as well as his own.

Dr. Hill opined that Claimant had "a class 1 impairment of the skin, maybe 4 percent based on the susceptibility of that area of skin to trauma and to the irritation, to standing and dependency.

Hill Depo., p. 12. Though Dr. Hill did not specifically cite to the *AMA Guides* as the basis of his opinion, his opinion is consistent with the "Criteria for Rating Permanent Impairment Due to Skin Disorders" found at Table 8-2 of the *AMA Guides*,<sup>1</sup> which identifies a class 1 impairment as:

Skin disorder signs and symptoms present or intermittently present **and** no or few limitations in performance of activities of daily living; . . . **and** requires no or intermittent treatment.

Impairment ratings for a class 1 skin disorder range from 0% to 9% of the whole person. Dr. Hill's testimony is somewhat confusing in that he identifies a class 1 skin disorder and "maybe 4%" then proceeds to opine, quite clearly, that Claimant has no whole person impairment:

Q. [By Garbett] Now, you alluded in your examination from Mr. Sasser that you might give [Claimant] something around a 4 percent impairment for this. Are you talking about an impairment of an extremity or a whole person impairment?

A. This is skin impairment or of an extremity impairment [sic]. Reviewing the classifications of when you give a whole person impairment, I'd have to say this probably doesn't justify any impairment of the whole person.

*Id.*, at p. 18.

Dr. Hill is clearly confused about the use of Table 8-2 of the *AMA Guides*, in that any rating within a class 1 skin disorder is a whole person rating. However, Dr. Hill ultimately determines that Claimant has no permanent impairment. While the doctor's methodology may be questioned, his ultimate conclusion is consistent with the evidence in the record. Claimant has a very small scar on the inside of her lower left leg. There is some slight discoloration around the scar itself. With all

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<sup>1</sup> The Referee takes judicial notice of the *AMA Guides* and that the *Guides* are the legal paradigm for

due respect to Claimant and her considerable discomfiture about the scar's appearance, the scar itself, as viewed by the Referee, is hardly disfiguring. The location of the scar is not prominent. To a casual observer the area could appear to be a bruise or other discoloration. Claimant has no restrictions as a result of the scar. At the time of the hearing, and at her visit with Dr. Hill less than a week after the hearing, she described almost daily pain, a limp, and an inability to participate in many of the activities she previously enjoyed as a result of the industrial injury. This testimony is in striking contrast to the testimony she offered at her deposition in November 2004. In her deposition, Claimant stated that the scar was tender, but not painful, there was no mention of a limp, and she averred that her injury had not in any way reduced her ability to participate in any of the hobbies she had previously enjoyed. In sum, the Referee finds that Claimant has a class 1 skin disorder as described by the *AMA* Guides, and a permanent impairment rating of 0% of the whole person. Because Claimant has no permanent impairment, she cannot have any disability in excess of her impairment.

13.     **Medical Benefits.** An employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be required by the employee's physician or needed immediately after an injury or disability from an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432 (1). It is for the physician, not the Commission, to decide whether the treatment was required. The only review the Commission is entitled to make of the physician's decision is whether the treatment was reasonable. *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

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rating impairment under the workers' compensation statutes of Idaho.

Claimant first received care for her burns at medical facilities located at her work site. However, she went to the Blackfoot Medical Clinic when two of the burns remained troublesome. At Blackfoot, Claimant received thorough and extensive care including cleansing and dressing of her burns, physical therapy treatment, and pain medication. Dr. Hill, who has treated Claimant for many years, testified that no further medical treatment is necessary. Indeed, he said that the burn “looks very good for this time [April 26, 2005].” PA Grandee mentioned the possibility of surgical revision of the scar, but did not recommend such cosmetic surgery. Even if she had, Surety’s liability for a purely cosmetic procedure would entail a determination far beyond the record in this proceeding. Claimant has presented no contrary persuasive medical testimony that demonstrates a likelihood of future need. Of course, Surety’s obligation to provide reasonable and necessary medical care is ongoing. Should Claimant be able to demonstrate at some future time that she needs further treatment as a result of this particular industrial injury, she may call upon the Surety to fulfill its obligation to provide reasonable and necessary medical care. The Referee finds that Claimant’s medical treatment was reasonable, that no additional treatment is reasonably necessary at this time, and declines to award additional medical benefits.

### **CONCLUSIONS OF LAW**

1. Claimant has no permanent partial disability in excess of impairment.
2. Claimant has received all reasonably necessary medical care to which she is entitled at this time.

### **RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 18 day of August, 2005.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Rinda Just, Referee

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 24 day of August, 2005, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

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